

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 AF-06 EB-07 COME-00 IO-11 OES-05

OFA-01 EPA-04 CEQ-01 INT-05 SMI-01 TRSE-00 CIAE-00

INR-07 NSAE-00 SS-15 SP-02 NSC-05 /086 W

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R 181435Z FEB 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC 6532

INFO AMEMBASSY OSLO

UNCLAS SECTION 01 OF 02 BONN 02703

E.O. 11652: N/A

TAGS: EIND, PFOR, PORG, GW

SUBJ: FRG REPLIES TO QUERY ON NAMIBIAN BABY FUR SEALS

REF: (A) STATE 26489; (B) BONN 2090

1. VON ROTHENBURG (LEGAL SECTION, FONMINISTRY) HAS GIVEN US FONMINISTRY REPLY TO QUESTION 2 (REF A) AS TO WHETHER IMPORT OF BABY SEAL PELTS ORIGINATING IN NAMIBIA IS CONSISTENT WITH INTERNATIONAL LEGAL OBLIGATIONS REGARDING NAMIBIA AS EXPRESSED IN ICJ OPINION OF 21 JUNE 1971 AND SC RESOLUTIONS 276 (1970) AND 301 (1971). SUBSTANTIVE TEXT FOLLOWS:

2. QUOTE. DURING THE DEBATE ABOUT NAMIBIA IN THE 4TH COMMITTEE OF THE UN GENERAL ASSEMBLY ON 29 NOVEMBER 1974 THE DELEGATE OF THE FEDERAL REPUBLIC OF GERMANY MADE THE FOLLOWING STATEMENT ON THE ECONOMIC RELATIONS TO NAMIBIA IN AN EXPLANATION OF VOTE:

"I NOW COME TO THE ECONOMIC MEASURES ENVISAGED IN OPERATIVE PARAGRAPHS 17 TO 19, AND IN PARTICULAR TO THE DECREE OF THE COUNCIL FOR NAMIBIA. THE FEDERAL GOVERNMENT HAS ALWAYS MADE IT PERFECTLY CLEAR THAT IT RECOGNIZES THE COUNCIL FOR NAMIBIA AS UNCLASSIFIED

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THE REPRESENTATIVE OF THE POLITICAL INTERESTS OF THE

POPULATION OF NAMIBIA WITHIN THE UNITED NATIONS. WE CO-OPERATE CONSTRUCTIVELY WITH THE COUNCIL. HOWEVER, WE ARE OF THE OPINION THAT THE COUNCIL CANNOT MAKE BINDING ARRANGEMENTS. IN ACCORDANCE WITH THE PRINCIPLE OF INTERNATIONAL LAW THIS WOULD PRESUPPOSE THE ACTUAL EXERCISE OF TERRITORIAL SOVEREIGNTY WHICH THE COUNCIL OF NAMIBIA DOES NOT POSSESS. AS REGARDS THE ENFORCEMENT MEASURES ENVISAGED IN THE DECREE, THESE ARE, IN THE OPINION OF THE FEDERAL GOVERNMENT, NOT ONLY OUTSIDE THE COMPETENCE OF THE COUNCIL BUT IN FACT OUTSIDE THAT OF THE GENERAL ASSEMBLY, TOO. IN THE OPINION OF THE FEDERAL GOVERNMENT THE DECREE, THEREFORE, CANNOT CLAIM LEGAL VALIDITY. THE FEDERAL GOVERNMENT DOES NOT CONSIDER ITSELF TO BE LEGALLY BOUND BY THE DECREE AND REJECTS ALL MEASURES BASED ON IT."

FURTHERMORE, IN A NOTE BY THE PERMANENT REPRESENTATIVE OF THE FEDERAL REPUBLIC OF GERMANY TO THE SECRETARY-GENERAL OF THE UNITED NATIONS OF 27 MAY 1974 IT IS STATED INTER ALIA:

"AS TO THE ECONOMIC RELATIONS WITH NAMIBIA, IT IS A FACT THAT PRIVATE GERMAN COMPANIES PLAY A VERY MINOR ROLE IN THE OVERALL ECONOMY OF THE TERRITORY. THE FEDERAL GOVERNMENT IN NO WAY ENCOURAGES ECONOMIC ACTIVITIES IN NAMIBIA. NONE OF THE ECONOMIC INCENTIVES GRANTED IN THE FRAMEWORK OF OUR ECONOMIC CO-OPERATION WITH OTHER COUNTRIES APPLY TO NAMIBIA . . ."

ON THE OTHER HAND THE FEDERAL GOVERNMENT HAS NOT RESTRICTED IMPORTS FROM NAMIBIA. IN THE ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE DELIVERED ON 21 JUNE 1971 THE INTERNATIONAL COURT OF JUSTICE DID NOT STATE THAT THE STATES MEMBERS OF THE UNITED NATIONS OR - AS THE FEDERAL REPUBLIC OF GERMANY AT THAT TIME - STATES WHICH ARE NOT MEMBERS OF THE UNITED NATIONS WERE UNDER THE OBLIGATION TO STOP ALL TRADE WITH NAMIBIA OR THE IMPORT OF NATURAL RESOURCES FROM THAT TERRITORY. ON THE CONTRARY, THE UNCLASSIFIED

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COURT STATED, THAT "NON-RECOGNITION" (OF THE LEGALITY OF THE SOUTH AFRICAN PRESENCE IN NAMIBIA) "SHOULD NOT RESULT IN DEPRIVING THE PEOPLE OF NAMIBIA OF ANY ADVANTAGES DERIVED FROM INTERNATIONAL CO-OPERATION." THE UN SECURITY COUNCIL IN ITS RESOLUTION 301 (1971) EXPRESSLY MADE REFERENCE TO THE PARAGRAPH IN THE ICJ ADVISORY OPINION CONTAINING THE ABOVE QUOTED SENTENCE.

THE FEDERAL GOVERNMENT UNDERSTANDS THIS SENTENCE
IN THE ADVISORY OPINION OF THE COURT TO APPLY ALSO IN
THE FIELD OF INTERNATIONAL ECONOMIC CO-OPERATION.

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BUT EVEN IF CERTAIN PARTS OF THE ADVISORY OPINION OF THE
INTERNATIONAL COURT OF JUSTICE AND/OR OF THE RESOLUTIONS
OF THE UN SECURITY COUNCIL COULD BE INTERPRETED AS
AIMING AT A DISCONTINUATION OF ECONOMIC RELATIONS WITH
NAMIBIA IT IS THE VIEW OF THE FEDERAL GOVERNMENT THAT
NEITHER THE ADVISORY OPINION OF THE INTERNATIONAL
COURT OF JUSTICE NOR THE RESOLUTIONS OF THE UN
SECURITY COUNCIL ON NAMIBIA IMPOSED LEGALLY BINDING
OBLIGATIONS ON STATES MEMBERS OF THE UN OR ON OTHER
STATES.

SUCH LEGALLY BINDING OBLIGATIONS MAY ONLY BE IMPOSED
ON STATES BY DECISIONS OF THE UN SECURITY COUNCIL IN
ACCORDANCE WITH THE PROVISIONS OF CHAPTER VII OF THE
UNITED NATIONS CHARTER. HOWEVER, NONE OF THE SECURITY
COUNCIL RESOLUTIONS ON NAMIBIA WERE BASED ON ANY OF
THE PROVISIONS OF CHAPTER VII OF THE UN CHARTER.

HISTORY HAS SHOWN, THAT TRADE EMBARGOES AND SIMILAR
ECONOMIC MEASURES AGAINST A STATE OR A REGIME VERY
RARELY HAVE THE INTENDED EFFECT AND ON THE OTHER HAND
BRING ECONOMIC HARDSHIP TO THOSE PEOPLE IN WHOSE
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INTEREST THESE MEASURES WERE TAKEN. THE FEDERAL
GOVERNMENT DOES NOT BELIEVE THAT A TRADE EMBARGO ON
NAMIBIA WOULD HAVE ANY SIGNIFICANT EFFECT ON THE
POLICY OF THE REPUBLIC OF SOUTH AFRICA TOWARDS
NAMIBIA. THEREFORE, IT DOES NOT REGARD IMPORTS OF
GOODS AND NATURAL RESOURCES FROM NAMIBIA AS INCONSISTENT
WITH ITS INTERNATIONAL LEGAL OBLIGATIONS OR A VIOLATION
OF THE INTERESTS OF THE PEOPLE OF NAMIBIA. UNQUOTE.
HILLENBRAND

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